IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 257/2007

Smt. Dropadi Shantaram Harmalkar,
major, resident of 405,
Lopas Waddo, Verla-Canca, Bardez, Goa. ..... Petitioner.

V/s.

1. Shri Pandurang Anant Uskaikar,
major, resident of 354, Cumbia Morod,
Guirim, Bardez, Goa.

2. Shri Santosh Anant Uskaikar,
major, resident of 354, Cumbia Morod,
Guirim, Bardez, Goa.

3. Communidade of Verla-Canca,
through its attorney having Office at
Verla, Bardez, Goa. ..... Respondents.

Mr. Dajvip Patkar, Advocate for the petitioner.

Mr. Valmiki Menezes, Advocate for the respondents No.1 and 2.

CORAM : R.S. MOHITE, J.

DATE : AUGUST 03, 2007

ORAL JUDGMENT :

Heard both sides. Rule. By consent, rule made returnable forthwith.

2. This is a writ petition, impugning an order dated 22.2.2007 passed by the District Judge-2, Panaji, rejecting the applicant's application for condonation of 39 days' delay in filing a misc. civil appeal. On perusal of the application made by the present petitioner who was the applicant before the District Judge, it is seen that it was her case that she fell ill on 26.12.2004. Civil Misc. Applications No. 281/02 & 271/03 in Regular Civil Suit No. 153/2002/D/C came up before the trial Court when she was ill and were disposed off on 30.12.2004. She did not attend this date as she was under treatment of Dr. B. G. Kuvelkar. It is her contention that she was not aware that her application had been decided. She came to know about the same only when she approached her Advocate on 7.2.2005. The record indicates that thereafter she immediately applied for the certified copy on 8.2.2005 and the same was obtained on 10.2.2005. In the circumstances, the appeal filed by her was delayed by 39 days.

3. The District Judge has rejected her application on the ground that the sufficient cause must relate to some circumstances before the limitation expires. He has concluded that the record indicated that the applicant contacted her Advocate only on 7.2.05 i.e. after the period of limitation. There is no explanation or cause shown for not having filed the

appeal before 29.1.05. According to him, ignorance of law is no excuse. The reasoning given by the District Judge has not taken into account the contention of the petitioner that she had not attended the Court proceedings on 30.12.04 and, therefore, was not aware of the passing of the order on the said date. In the circumstances, the writ petition deserves to be allowed, subject to costs.

4. The writ petition is, accordingly, allowed and finally disposed off. Rule made absolute in terms of prayer clauses (a) and (b), subject to payment of costs of Rs.1,000/-. Costs will be paid to the respondents No.1 and 2 within a period of four weeks.

R.S. MOHITE, J.

ssm.